

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner's husband has worked as a truck driver for the past year. His regular hours vary somewhat from week to week and he frequently has significant overtime. Because of the fluctuations, the petitioner's husband's income is certified on a quarterly basis. On September 8, the petitioner's income was reviewed for the quarter beginning October 1, 2000. At that

time, the petitioner provided copies of his three most recent paychecks which covered the last six-weeks. Those biweekly paychecks showed the following:

<u>Date Paid</u>	<u>Regular Pay</u>	<u>Overtime Pay</u>	<u>Period Covered</u>
8-02-2000	\$675.75	\$184.88	7-16 to 7-29
8-16-2000	\$864.00	\$168.75	7-30 to 8-12
8-30-2000	\$806.67	\$189.00	8-13 to 8-26

3. At the review, the Department also became aware that the petitioner had received \$100.00 in child support payments during the month of August. This occurred because two \$50.00 support checks arrived in the same month although one was actually in payment for another month and for some reason (not made clear at the hearing) did not arrive at the appropriate time.

4. The Department added up the gross regular and overtime pay for the prior six weeks and obtained a weekly average of \$481.50. That amount was multiplied by 4.3 to obtain a monthly average of \$2,070.47.¹ The Department determined that based on that amount that the petitioner's husband could expect to earn \$2,070.47 monthly for the last quarter of 2000. The Department projected as well, based on the petitioner's receipt of \$100.00

in August for child support, that she would continue to receive \$100.00 per month for the next three months as well. Those two figures added together gave the petitioner a countable gross Food Stamp income of \$2,170.47 per month. Based on that projection, the petitioner was notified on September 11, 2000 that her Food Stamp benefits would cease of October 1, 2000 because her household had exceeded the five-person maximum gross income of \$2,115.00 per month.

5. The petitioner does not dispute that the income figures she gave for her husband are correct but she argues that he does not always get overtime. She offered no evidence of what a fairer figure might be or how it might have been differently calculated. She also argues that it is unfair to use \$100.00 as a monthly figure for child support since she usually gets only \$50.00.

ORDER

The decision of the Department finding that the petitioner's household is not eligible for Food Stamps because it failed the gross income test is reversed and the matter is

¹ Of course, the actual amount should have been \$2,070.45. It is not clear where the extra two cents came from but it does not affect the outcome of this case.

remanded for the calculation of any benefits which would be due to the family beginning October 1, 2000.

REASONS

The Department's Food Stamp regulations, which are federally mandated, require that all earned income from wages and salaries of an employee in the household be counted when determining eligibility. F.S.M. 273.9(b)(1). This regulation includes over-time pay unless it is received "too infrequently or irregularly to be reasonably anticipated" or is under \$30.00 in a quarter. F.S.M. 273.9(c)(2). All the gross income, regular and over-time, earned in the last thirty days prior to the certification review is typically used to determine what the future income is likely to be. F.S.M. 273.10(c)(1)(i). However, income can be averaged over a longer time if it tends to fluctuate and using some other method "will provide a more accurate indication of anticipated fluctuations in future income." F.S.M. 273.10(c)(1)(ii).

The petitioner maintains that her husband's income fluctuates due to over-time. Instead of using the thirty-day look back period, which would have been less favorable to the petitioner because he earned over \$500.00 per week in that period, the worker looked back over a six-week period. The

petitioner does not argue that this six-week review does not accurately reflect his average monthly income or that reviewing a longer period of time such as two or three months would have more accurately reflected his income. Neither does she argue that some change in her husband's employment had occurred making it less likely that he would receive over-time in the next quarter. If she has such arguments to make, she can present them to the Department at any time and ask for a reinstatement of her Food Stamps. As of this time, she has made no persuasive argument that the Department unreasonably anticipated that her husband would earn \$2,070.00 during each of the upcoming three months.

Child support made directly to a member of the household from a non-household member must also be counted under the Food Stamp program. F.S.M. 273.9(b)(2)(iii). Again, the Department looks to the past thirty days to predict what is likely to occur in the next three months. F.S.M. 273.10(c)(i). In this case, the petitioner did receive two support checks of \$50.00 each in the last thirty days. However, since she usually gets \$50.00 per month, it is unlikely that she would get \$100.00 a month during each of the upcoming three months. That would only be likely to occur if the child support amount had been changed by the Court. The regulations state that when persons receive

income on a recurring monthly basis, they "shall not have their monthly income varied merely because of changes in mailing cycles. . ." F.S.M. 273.10(2)(iii). The only amounts which can be anticipated with "reasonable certainty" for child support payments is \$50.00 per month. F.S.M. 273.10(c)(1)(i).

Therefore, the Department was in error when it added \$100.00 per month to the petitioner's anticipated income from child support.

When the final total of countable gross income is amended to include only one payment of \$50.00 per month, the household's total gross countable income is reduced to \$2120.45.² The maximum gross income for a family of five as of October 1, 2000, the beginning period at issue here is \$2,162.00.³ P-2590 C. As the family's income is under that gross figure, it has passed the gross income test. F.S.M. 273.9(a)(1)(i). The matter must be remanded to the Department to determine the family's eligibility for Food Stamps under the net income test.

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² This figure amends the 2 cent error in the previous income calculations.

³ Prior to October 1, 2000, this figure was \$2,115.00. It is not clear why the computer was using this old figure for the petitioner's certification which was to begin October 1, 2000 and should have included the new gross income figure.